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Crime and Insanity edited by Richard W. Nice

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Book Reviews

CRIME AND INSANITY. Edited by Richard W. Nice, Philosophical Library, New York, 1958. 280 pp.

This is one of the best—if not *the* best—of the several symposia on problems of forensic psychiatry that have appeared in recent years. The treatment is not exhaustive but from a functional point of view is geared to ultimate practical legislative solutions; the issues are well selected, and the disciplines involved—law, psychiatry, psychology and sociology—are ably represented. However, without apparent reason, certain issues are treated exclusively by lawyers, while others are completely preempted by representatives of the sister sciences of the law. Thus, the now familiar issue of *Durham* versus the American Law Institute's definitions of "insanity" as a defense in a criminal case is covered by lawyers in a familiar way. To students of criminal law, the names of the writers suggest the arguments advanced: Judge Sobeloff (*From McNaghten to Durham and Beyond*), Professors Weihofen (*In Favor of the Durham Rule*) and Wechsler (*The American Law Institute: Some Observations on Its Model Penal Code*). One would wish to hear the psychiatric side at this time, when the *Durham* rule has undergone some courtroom testing. Perhaps also semantictists ought to be heard on Professor Weihofen's prnicipal—notice, negative—apology of *Durham,* namely, that the alternative suggested by the American Law Institute contains key words (such as "substantial") which are rather indefinite. The question would seem to be whether or not they add an element of relatively greater definiteness to the test, absolute definiteness in legislative drafting being a utopian goal.[1]

Less generally known are the contentions of the writers specifically concerned with "irresistible impulse." The disciplines represented are psychiatry and sociology, but not law. In a noteworthy contribution, Dr. Davidson (*Irresistible Impulse and Criminal Responsibility*) suggests a useful differentiation of impulse: "(a) Explosive reactions in psychotic (insane) persons; (b) Obsessional compulsions in neurotics (example: pyromania); (c) Rage reactions in persons with no psychosis or psychoneurosis" (page 30). The author believes that the first type presents no problem, for an act committed under the impact of such impulse is clearly outside of the scope of criminality, since

[1] This statement, of course, should not be taken to be a defense of the Law Institute's tests.

it is "unintentional in any meaningful sense."[2] The problem of the neurotic impulse, generally assumed to fall within the area of responsibility on the fallacious theory that "a neurotic compulsion differs only in degree from normal temptation," should—in the author's view—be re-examined. For the protection of the individual himself and of society, the arsonist or the exhibitionist must be either imprisoned or committed, and Dr. Davidson apparently favors the former solution. But "rage reactions in otherwise normal people" cannot, in his opinion, be handled as instances of irresponsibility. Of course, it may be argued—and this is overlooked by the author—that in such states there is perhaps less "intention" than in some of the instances of psychotic persons, provided that the psychiatrist is prepared so to testify.

Cressey (*The Differential Association Theory and Compulsive Crimes*) deals with the question of whether so-called "compulsive crimes" constitute an exception from the differential association theory's hypothesis that "criminality is learned from observations of definitions favorable to law violation," where such crimes result not from former contacts with differential values concerning "law-abidingness," but depend upon a non-social agent or process. The author notes that generally crimes are characterized as "compulsive" when a motive is lacking, but that "motives are circumscribed by the actor's learned vocabulary" and that his identifications as, *e.g.*, a "kleptomaniac" are thus determined. This, of course, introduces the actor's self-evaluation (as a kleptomaniac) as an element of criminality—an evaluation that is not relevant under present law.

As in Cressey's article, a mainly methodological orientation again appears in another sociological essay which attempts to cover the broader area of crime generally. Bloch (*Psychiatric and Sociological Variations in the Interpretation of the Criminal Act*) deals with the complexity of the individual crime factors and the relatively of "freedom" a person may possess to refrain from crime in the light of the variations of pressures. This phenomenon was discussed some time ago by the German jurist Rheinhard Frank. Bloch's contribution lies rather in his suggestions for combination of psychodynamic and situational factors in interpreting crime causation and for greater utilization of sociological recearch in psychiatry.

Psychiatric problems arising beyond the area of defining insanity are considered by Dr. Eaton in a provocative article (*Functions of the*

[2] One could argue that no impulsive act is "intentional" in any "meaningful sense," provided that meaning is adequately construed. But it may be assumed that in the case of a psychotic defendant a psychiatrist would not hesitate to testify to the absence of "intention," although he may then think of "intention" in a legal sense.

Psychiatrists in the Court and Prison). The author's focus is on "treatment" rather than on diagnosis. These issues are usually separated in law. Perhaps due to this separation, the law often affords treatment to the less treatable, *e.g.*, the habitual offender, while denying it to the more treatable, the occasional offender. The author suggests but does not exhaust a problem which should be of greatest concern to legislators: "If punishment *sometimes* keeps a person from repeating an offense, then it is important to know what sort of person might be influenced in this way and by what punishment." (page 169). This suggestion would be more fruitful if the author also indicated a method for securing an answer to this query, provided that such answer is expected to be sufficiently general, so as to afford a basis for legislative action. Dr. Eaton also raises a significant issue in the law regarding unfitness to plead. Determination of such unfitness deprives the accused of opportunity for acquittal, while subjecting him to confinement when there may be no need for it for the protection of himself or of society. But whether such need exists may often be determined only after knowledge whether he committed the act of which he stands secured.

Other inadequacies of our present state of the law are pointed out by Burke (*New Light on the Eternal Convict Between Law and Medicine in Judicial Practice*) in an appeal for federal legislation to govern all non-voluntary admissions to state institutions and generally for greater recognition of patients' rights as regards diagnostic and therapeutic methods.

While Professor Winn (*Principles of Punishment*) reexamines the old question of the justification of the state's right to punish, Dr. Finn (*Reflections on the Psychologist as Expert Witness*) draws attention to the often crudely punitive treatment of psychiatric patients in State hospitals.

This symposium is an essential in libraries of "social scientists" in the broadest sense of this term.

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